

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION**

IN RE:	§	
	§	Chapter 11 Case No. 20-30058
MILLS FORESTRY SERVICE, LLC,	§	(Jointly-Administered)
	§	
Debtor.	§	

IN RE:	§
	§
SAMMY CLYDE MILLS, III,	§
	§
Debtor.	§

AGSOUTH FARM CREDIT, ACA,	§	
	§	
Plaintiff,	§	
	§	
v.	§	ADVERSARY PROCEEDING
	§	CASE NO.: _____
SAMMY CLYDE MILLS, III,	§	
	§	
Defendant.	§	

COMPLAINT OBJECTING TO DISCHARGE

COMES NOW AGSOUTH FARM CREDIT, ACA (“AgSouth”), creditor in the above-reference case, and hereby files this Complaint, showing the Court as follows:

1.

AgSouth is a creditor of record and thus has standing to bring this adversary.

JURISDICTION AND VENUE

2.

Defendant Sammy Clyde Mills, III, is a resident of Emanuel County, Georgia who has filed for Chapter 11 protection with this Court and is subject to the jurisdiction of this Court. He may be served through his attorney of record, David L. Bury, Jr., Fickling & Co. Building, Suite 800, 577 Mulberry Street, Macon, Georgia 31201

3.

The Court has jurisdiction over this case pursuant to 11 U.S.C. §105; 28 U.S.C. §1334; and B.R. 7001. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(J).

4.

Venue is proper under 28 U.S.C. §1409.

FACTS

5.

The Debtor is indebted to AgSouth pursuant to a promissory note dated January 8, 2020, in the principal amount of \$166,624.27. (A copy of the January 8, 2020 Note is attached hereto as Exhibit A). As of March 7, 2020, the total owing on the Note was \$168,318.90. (A copy of the Payoff Statement is attached hereto as Exhibit B).

6.

The Debtor executed a Security Agreement to collateralize the above referenced obligation. (A copy of the June 8, 2015 Security Agreement is attached hereto as Exhibit C). AgSouth perfected its security interest by filing a UCC-1 Financing Statement. (A copy of the June 24, 2015 UCC-1 is attached hereto as Exhibit D). Pursuant to the debt, the Debtor has pledged his interest in a 2005 John Deere Model 648G Grapple Skidder, Serial No. 596824.

7.

The Debtor executed a second Security Agreement to collateralize the above referenced obligation. (A copy of the July 28, 2016 Security Agreement is attached hereto as Exhibit E). AgSouth perfected its security interest by filing a UCC-1 Financing Statement. (A copy of the August 1, 2016 UCC-1 is attached hereto as Exhibit F). Pursuant to the debt, the Debtor has pledged his interest in a 2004 Caterpillar D8R Dozer with Cab, AC, SU Blade and KG Blade attached hereto, Serial No. 6YZ01816.

8.

Mills Forestry Service, LLC executed a Security Agreement to collateralize the above referenced obligation on behalf of Debtor. (A copy of the February 26, 2019 Security Agreement is attached hereto as Exhibit G). Debtor signed this Security Agreement in his capacity as the Sole Member/Manager of Mills Forestry Service, LLC. AgSouth perfected its security interest by obtaining a certificate of title designating it as the lienholder. (A copy of the March 3, 2019 Certificate of Title is attached hereto as Exhibit H). Pursuant to the debt, the Debtor has pledged his interest in a 1997 Pitts Trailer, VIN/Serial No. 1PELT4025VP971255.

9.

The aforementioned security agreements explicitly states that the party pledging the collateral will not sell or otherwise dispose of the collateral, including all proceeds therefrom, without the prior written consent of AgSouth.

10.

On or about September 24, 2018, the 2005 John Deere Model 648G Grapple Skidder, Serial No. 596824, was destroyed in a fire while in the Debtor's possession. Debtor received insurance proceeds from Aviant Insurance for the collateral in the \$55,500.00. Debtor deposited these funds in the Mills Forestry Services, LLC operating account and did not notify or receive the written consent of AgSouth as to the retention of the insurance proceeds.

11.

In 2018, Debtor sold the sold the 2004 Caterpillar D8R Dozer with Cab, AC, SU Blade and KG Blade attached hereto, Serial No. 6YZ01816 at Rebel Auction Company in Hazlehurst, Georgia. Debtor received sales proceeds in the amount \$70,000.00 for the sale of the collateral. Debtor deposited these funds in the Mills Forestry Services, LLC operating account and did not notify or receive the written consent of AgSouth as to the retention of the sales proceeds.

12.

In 2019, Debtor sold the sold the 1997 Pitts Trailer, VIN/Serial No. 1PELT4025VP971255 to an individual and received sales proceeds in the amount of \$4,500.00. Debtor deposited these funds in the Mills Forestry Services, LLC operating account and did not notify or receive the written consent of AgSouth as to the retention of the sales proceeds.

COUNT I - OBJECTION TO DISCHARGE PURSUANT TO §523(A)(6) AS A RESULT OF THE SALE OF COLLATERAL

13.

AgSouth hereby incorporates the allegations set forth in paragraphs 1-12 as if set forth in full.

14.

The Debtor caused willful and malicious injury to AgSouth by selling the collateral without obtaining the consent of AgSouth in an effort to prevent AgSouth from enforcing its perfected security interests.

15.

The Debtor caused willful and malicious injury to AgSouth by failing to notify the purchasers of the collateral that the collateral was pledged as security for a loan from AgSouth to Debtor, in an effort to prevent AgSouth from enforcing its perfected security interests.

16.

The Debtor caused willful and malicious injury to AgSouth by selling the collateral out of trust in an effort to prevent AgSouth from enforcing its perfected security interests.

17.

The debtor took these actions with full knowledge that the collateral was pledged to AgSouth and that he was under an obligation to report and obtain AgSouth's consent for all sales and also to notify third parties of AgSouth's security interest in the collateral.

18.

The debtor acted willfully and maliciously, thereby causing injury to AgSouth.

COUNT II - OBJECTION TO DISCHARGE PURSUANT TO §523(A)(6) AS A RESULT OF THE RETENTION OF INSURANCE PROCEEDS

19.

AgSouth hereby incorporates the allegations set forth in paragraphs 1-18 as if set forth in full.

20.

The Debtor caused willful and malicious injury to AgSouth by retaining the insurance proceeds received due to the destruction of the 2005 John Deere Model 648G Grapple Skidder, Serial No. 596824 without obtaining the consent of AgSouth in an effort to prevent AgSouth from enforcing its perfected security interests.

21.

The Debtor caused willful and malicious injury to AgSouth by failing to notify the insurance company that the collateral was pledged as security for a loan from AgSouth to Debtor, in an effort to prevent AgSouth from enforcing its perfected security interests.

22.

The Debtor caused willful and malicious injury to AgSouth by retaining the insurance proceeds in an effort to prevent AgSouth from enforcing its perfected security interests.

23.

The Debtor took these actions with full knowledge that the collateral was pledged to AgSouth and that he was under an obligation to report and obtain AgSouth's consent to dispose of the collateral, including any and all proceeds of the collateral.

24.

The Debtor acted willfully and maliciously, thereby causing injury to AgSouth.

WHEREFORE, AGSOUTH prays:

- 1) That the Court refuse to grant the Debtor a discharge as to AgSouth's debt pursuant to 11 U.S.C. § 523(a)(6);
- 2) That the Court grant AgSouth reasonable attorneys, fees, costs, and expenses of litigation; and
- 3) All other relief that the Court deems adequate and just

This 15th day of June, 2020.

BROWN ROUNTREE PC

/s/Charles P. Aaron
CHARLES P. AARON
State Bar No. 000031

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